

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

MARIA HRISTOPOULOS,

Respondent,

v.

NICK GIANNARIS,

Appellant.

A152099, A152239

(San Mateo County
Super. Ct. No. FAM0119610)

Nick Giannaris (Father) appeals orders of the trial court denying his request for modification of his child support obligation and setting the amount of additional child support expenses. We shall affirm the orders.

I. BACKGROUND

Father and Maria Hristopoulos (Mother) are the parents of one child. In June 2015, after their relationship ended, the trial court ordered Father to pay Mother \$750 per month in child support through November 30, 2015 and \$2,573 per month thereafter, additional costs for “add-on” expenses, \$25,000 in child support arrearages for the period from November 8, 2012 through April 30, 2015, and \$21,428 for add-on expenses from November 1, 2012 through April 30, 2015.

Arrearages and Add-Ons

In November 2016, Mother requested reimbursement of payments she had made for the child's medical expenses and extracurricular activities. (Fam. Code, § 4062.)¹ The record does not indicate that Father filed an opposition to her request for these "add-ons." The court held a hearing on the request on February 13, 2017, and ordered Father to reimburse Mother \$7,637.80 for child support add-ons for the period May 1, 2015 through November 2, 2016, and to pay Mother \$537.00 per month for child support add-ons from November 2, 2016 forward.

The trial court held a review hearing on the child support add-ons on June 12, 2017. Father's counsel asserted that Father had no ability to pay the arrearages on the add-ons and asked the court to suspend payments. On July 7, 2017, the court issued an order finding that Father had not paid the previously-ordered \$7,637.80 in add-on reimbursements for the period of May 1, 2015 to November 2, 2016; that Father had not paid the \$537 per month ordered in February 2017; and that he owed Mother \$2,322 in child support add-ons for November 3, 2016 through March 31, 2017. It ordered him to continue paying \$537 per month for child support add-ons and reserved jurisdiction regarding additional reimbursement for March 31, 2017 onward.

Request for Child Support Modification

The trial court's register of actions indicates Father filed a request for modification of child support, as well as an income and expense declaration, on April 3, 2017.² In supporting declarations, Father stated that the 2015 child support order was based on the mistaken notion that he was earning \$338,244 per year; that he made less money than that amount—or an average yearly gross income of \$73,903.92 over the previous ten years; that his driver's license had been suspended for nonpayment of child support; that he was currently living in Greece; that he had lost his job in California in May 2016 and had

¹ All statutory references are to the Family Code. Section 4062 authorizes the trial court to order, as additional child support, certain child care, health care, educational, and travel costs.

² These documents are not included in the record on appeal.

been diligently seeking work since then; that the cost of living in California was too high for him to return there; that he had a startup business; and that he had been making payments to the best of his ability.

Mother submitted declarations calling into question Father's description of his living situation and expenses in Greece and stating that he had lived in the Bay Area his entire adult life and had bachelor's and master's degrees in engineering; that he had worked at several technology companies in the Bay Area; that he could easily obtain employment in the Bay Area if he chose to do so; and that the average unemployment rate in San Mateo, Santa Clara, and San Francisco Counties—ranging from 2.7 to 3.6 percent—was far lower than that of Greece, where Father was living.

On June 28, 2017, the trial court denied the request to modify child support and continued the existing support order in effect.

II. DISCUSSION

“A child support order may be modified when there has been a material change of circumstances. [Citation.] The party seeking the modification bears the burden of showing that circumstances have changed such that modification is warranted.” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054.) The reason for this rule “ ‘ “is to preclude relitigation of the same facts” and to bring finality to determinations concerning financial support.’ [Citation.] . . . ‘ “ “Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order.” ’ ” ” ” (*In re Marriage of Usher* (2016) 6 Cal.App.5th 347, 357.)

“ ‘The ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court. [Citation.] The reviewing court will resolve any conflicts in the evidence in favor of the trial court's determination.’ ” (*In re Marriage of Cryer, supra*, 198 Cal.App.4th at p. 1054.) “ ‘ “Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its

opinion and thereby divest the trial court of its discretionary power.’ ” ’ ” (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 244.)

Father has failed to show the trial court abused its discretion in declining to modify his child support. He argues that the original 2015 child support order was based on faulty information about his income, but that order is not before us on appeal. In his submissions to the trial court, Father averred that his income had declined after he lost his job in 2016 and that he had been seeking work and working for his startup “S” corporation. But he provides no details about his efforts, and Mother submitted declarations suggesting that the earning capacity of an engineer with Father’s education and experience was greater than the amount he was earning.

Moreover, the record Father has provided is inadequate to allow us to rule in his favor. It lacks Father’s request for modification, his income and expense declaration, and documentation regarding his startup corporation. It also lacks the transcript of the hearing on his request to modify the child support.³ In the absence of that transcript, we cannot determine what other evidence might have supported the court’s order or the reasons the court exercised its discretion as it did. In such a case, “[t]he evidence is presumed sufficient to support the judgment.” (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; see also *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324 [where appellant provides no reporter’s transcript of proceeding from which he appeals, we conclusively presume the evidence supports the court’s findings].) On this record, we must reject Father’s challenge to the denial of his request for modification of his child support.

³ On March 14, 2018, Father filed a motion to augment the record to include the transcript of the June 28, 2017 hearing. Mother opposed the motion on the grounds that Father did not include that hearing in his original record designation, did not comply with the requirements of the California Rules of Court for augmenting the record, and filed his motion four months after the record was filed and five days before his opening brief was due, after receiving two extensions of time to file his opening brief. We denied the motion to augment.

Father has similarly failed to meet his burden to show the trial court abused its discretion in finding he had not paid his previously-ordered add-on reimbursements, setting the amount he owed in add-ons from November 3, 2016 to March 31, 2017, and continuing the previously-set amount of \$537 per month for add-ons. Under section 4061, add-on expenses are to be apportioned one-half to each parent, unless a parent requests a different apportionment, supported by documentation showing a different apportionment is more appropriate. It does not appear that Father made any such request. He raises no challenge to the propriety or the amount of the expenses Mother claimed, and he has shown neither an abuse of discretion in fixing the amount of the add-ons nor a change in circumstances since the original add-on order.

III. DISPOSITION

The June 28, 2017 and July 7, 2017 orders are affirmed.

Tucher, J.

We concur:

Pollak, P.J.

Brown, J.